

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to D.C. Official Code §§ 47-2828, 47-2851.03a(o), and 47-2851.20, hereby gives notice of the adoption of amendments to Title 16, Chapter 8 (Home Improvements) of the District of Columbia Municipal Regulations (DCMR). This rulemaking is necessary to clarify the provisions, update the bond requirements of home improvement contractors, require home improvement contractors to maintain a list of all permitted work projects, require home improvement contractors to include their business license number on advertisements, update the service of process and appeals provisions, amend the definitions of “home improvement contract”, “home improvement work”, and “residential property”, and make technical corrections of legal citations.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on October 17, 2008 (55 DCR 10954). No comments were received in response to that notice and no changes have been made to the rulemaking. The final rules will be effective upon publication of this notice in the *D.C. Register*.

Title 16, Chapter 8 of the DCMR is amended as follows:**Section 800.1 is amended to read as follows:**

- 800.1 No person shall require or accept any payment for a home improvement contract to be undertaken in the District in advance of the full completion of all work required to be performed under the contract, unless that person is licensed as a home improvement contractor or as a licensed salesperson employed by a licensed contractor in accordance with the provisions of this chapter.

Section 800.6 is amended to read as follows:

- 800.6 Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of this chapter pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of this chapter shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.

Section 802.1 is amended to read as follows:

- 802.1 Each applicant for a contractor’s license shall file in the Office of the Director a bond issued in support of the license for which application is made, extending to third-party recovery, in the penal sum of twenty-five thousand dollars (\$ 25,000) running to the District of Columbia, with corporate surety authorized by the Commissioner of the Department of Insurance, Securities, and Banking to do business in the District.

Section 802.5 is amended to read as follows:

- 802.5 The security which may be accepted by the D.C. Treasurer under § 802.4 shall be one of the following:
- (a) Cash in the amount of twenty-five thousand dollars (\$ 25,000);
 - (b) A certified check or cashier's check in the amount of twenty-five thousand dollars (\$ 25,000) made payable to the order to the D.C. Treasurer; or
 - (c) A marketable bond or bonds or a note or notes having in the aggregate a maturity value of at least twenty-six thousand dollars (\$ 26,000) and issued by the government of the United States or by any agency or instrumentality of the government, together with an irrevocable power of attorney and agreement, on a form provided by the D.C. Treasurer authorizing the D.C. Treasurer to collect or sell, assign, and transfer that bond or note; Provided, that no such bond or note shall be collected or sold until such time as it may be necessary to make payment to any person entitled to recover damage from the security which the bond represents.

Section 802.8 is amended to read as follows:

- 802.8 If the security deposited pursuant to this section is other than bonds or notes and is reduced below twenty-five thousand dollars (\$ 25,000), or if the security is in the form of marketable bonds or notes and, by reason of the payment of or on account of any final judgment, is reduced to an amount less than twenty-six thousand dollars (\$ 26,000), the licensee shall, within five (5) calendar days after having been notified in writing by the Director to do so, make an additional deposit to bring the amount on deposit with the D.C. Treasurer for the purpose of this subsection up to the amount required under the appropriate provision of this section.

Section 807.1 is amended to read as follows:

- 807.1 Notwithstanding the applicable provisions of regulations governing refrigeration and air conditioning licensing and electrical licensing and bonding, and plumbing, but subject to the provisions of this section, a home improvement contractor licensed under the authority of this chapter may advertise in any manner and may state orally to a prospective customer that any contract between the customer and the contractor may provide for the performance of electrical, plumbing, gasfitting, or refrigeration and air conditioning work, or any combination of those services. In any advertisement, the licensee shall include his or her license number.

A new section 807.3 is added to read as follows:

- 807.3 A licensee shall maintain a list that includes information about all permits obtained and all contractors or subcontractors performing work on any project permitted or requiring a permit under this chapter. Such list shall include the contractor or subcontractor's name and address and, if applicable, their license number. If requested by the Director, the licensee shall produce this list within forty-eight (48) hours of the Director's request.

Section 814.5 is amended to read as follows:

- 814.5 The notice shall be personally served upon the applicant or licensee, or otherwise served by one of the following methods:
- (a) Served personally upon the applicant or licensee, or the applicant or licensee's agent; or
 - (b) Sent by first class mail to the home or business address of the applicant or licensee, or the applicant or licensee's agent, appearing on the application or license.

A new section 814.6 is added to read as follows:

- 814.6 A notice that is returned by the post office for reason of refusal of service of the addressee to accept delivery, or incorrect address, is deemed to have been properly served on the addressee by mail.

A new section 814.7 is added to read as follows:

- 814.7 An applicant or licensee may not file a separate application for licensure under this chapter during the appeal process.

Section 815.1 is amended to read as follows:

- 815.1 Any licensee on whom a notice has been served pursuant to § 814 may file a written notice of appeal with the Office of Administrative Hearings (OAH).

Section 815.2 is amended to read as follows:

- 815.2 All hearings and appeals shall be conducted pursuant to the regulations promulgated by OAH. Any stay of an OAH decision that results in the revocation of a license shall be issued pursuant to the procedures set forth by OAH.

Section 899 is amended as follows:

The definition of "home improvement contract" is amended to read as follows:

Home improvement contract - an agreement for the performance of home improvement work in the District for a contract price of three hundred dollars (\$ 300)

or more. This term shall also include the second or any subsequent agreements entered into between the same contractor and the same homeowner within any twelve (12) month period, if the total of the contract prices of all the agreements aggregate three hundred dollars (\$ 300) or more.

The definition of “home improvement work” is amended to read as follows:

Home improvement work – means the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a residential property, or a structure adjacent to the residential property, including a driveway, fence, garage, porch, deck, or swimming pool. Any construction work outside the scope of “home improvement work” shall be considered either general contracting or construction management, as those terms are defined in Title 17 of the District of Columbia Municipal Regulations, Chapter 39.

The term “home improvement work” does not include:

- 1) construction of a new building to be used as a residential property;
- 2) the sale or installation of any appliance, materials, household furnishings, or equipment, if not made a part of the realty;
- 3) work performed by licensed electricians, plumbers and gasfitters, or refrigeration and air conditioning mechanics, so long as the work performed by them is limited to that of their licensed occupation; or
- 4) work performed by a homeowner on his or her own residential property.

The term “residential property” is amended to read as follows:

Residential property - real property or interest in real property consisting of a single-family dwelling or two-family dwelling (flat), including an individual apartment unit in a condominium or cooperative apartment building, together with any structure or grounds appurtenant to the single-family or two-family dwelling.